

REMARKS

Applicants respectfully requests entry of the amendments and remarks submitted herein. Applicants thank the Examiner for the telephone conference of February 11, 2004. In view of the aforementioned telephone conference and an Interview Summary mailed March 23, 2004, claims 33 and 40 have been amended. Reconsideration of the pending application is respectfully requested.

Double-Patenting Rejection

Claims 33-37 and 40-51 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-20, 44, 51, and 58 of U.S. Patent No. 6,307,128.

Applicants submit herewith a Terminal Disclaimer and the appropriate fee. In view of the attached Terminal Disclaimer, Applicants respectfully request that the obviousness-type double patenting rejection of claims 33-37 and 40-51 be withdrawn.

The 35 U.S.C. §112 Rejections

Claims 33-37 and 40-51 stand rejected under 35 U.S.C. §112, first paragraph, as the Examiner asserted that those claims fail to comply with the written description requirement.

The Examiner asserted that a written description has not been provided that sets forth the structural features that are necessary in the claimed polypeptide that would confer the claimed functional activity. The Examiner concluded that there is a lack of written description with regard to which sequences that fall within the 80% identity range that also would have beta-ketoacyl synthase activity.

Without acquiescing to the Examiner's rejection, Applicants have amended claims 33 and 40 to recite a "polynucleotide that encodes a polypeptide having at least 95% sequence identity to SEQ ID NO:2..." Since the Examiner indicated in the telephone conference of February 11, 2004 that claims reciting at least 95% sequence identity to SEQ ID NO:2 would be allowed,

Applicants respectfully request that the rejection of claims 33-37 and 40-51 under 35 U.S.C. §112, first paragraph, be withdrawn.

Claims 33-37 and 40-51 stand rejected under 35 U.S.C. §112, first paragraph, as the Examiner asserted that those claims fail to comply with the enablement requirement.

The Examiner stated that the claims encompass a multitude of sequences, while the specification does not demonstrate any having beta-ketoacyl synthase activity. The Examiner maintained that the cited references are relevant in establishing unpredictability of the art. The Examiner asserted that Applicants have not taught that any sequences that fall within the scope of the claims encode polypeptides having beta-ketoacyl synthase activity. The Examiner concluded that it would require undue experimentation to identify any sequences that fall within the scope of the claims.

Without acquiescing to the Examiner's rejection, Applicants have amended claims 33 and 40 to recite a "polynucleotide that encodes a polypeptide having at least 95% sequence identity to SEQ ID NO:2...." Since the Examiner indicated in the telephone conference of February 11, 2004 that claims reciting at least 95% sequence identity to SEQ ID NO:2 would be allowed, Applicants respectfully request that the rejection of claims 33-37 and 40-51 under 35 U.S.C. §112, first paragraph, be withdrawn.

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CONCLUSION

Applicants respectfully request allowance of claims 33-37 and 40-51. Enclosed is a check in the amount of \$1,830 (\$770 for the RCE fee, \$950 for a Petition for Three-Month Extension of Time fee and \$110 for the Terminal Disclaimer fee). Please apply any other charges or credits to Deposit Account 06-1050.

Date: June 3, 2004

Respectfully submitted,

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